



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. Based on my research of relevant New Hampshire law and regulations applicable to snowmobiles, all-terrain vehicles (“ATVs”) and other off-highway recreational vehicles (“OHRVs”), I conclude that the legal opinions set forth in the Opinion regarding the permitted use of use of ATVs on the tract of forest land known as the “Nash Stream Tract” and subject to the Easement Deed are inconsistent with applicable New Hampshire law.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of the same type as the items specifically listed [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ Conservation Law Found. v. New Hampshire Wetlands Council, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also Roberts v. Gen. Motors Corp., 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Committee

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: William G. Abbott
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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Schedule 2

Opinion

[Attached.]

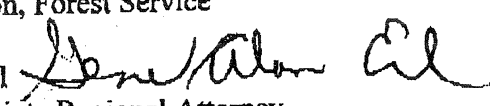


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails...." (decd, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF